

The literal scope of the requests encompasses information that is subject to the attorney-client privilege, such as advice about the invention communicated between the individual applicants, in-house counsel, and the undersigned representative. Applicants have interpreted the requirement for information as limited to non-privileged information, and are not disclosing privileged information. If the Office Action intended the request to include privileged information, Applicants request clarification of the legal basis for the Government to request such information. Applicants do not intend to waive attorney-client privilege with respect to any communications relating to the invention.

1.     “Any information related to the application including but not limited to: a copy of any non-patent literature, published application, or patent (U.S. or foreign), by any of the inventors, that relates to the claimed invention or exemplified by the IETF draft.”

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- 1.1    P. Watson, “Slipping in the Window: TCP RST Attacks,” December 25, 2003 (“Watson”).
- 1.2    USC Information Sciences Institute, “TRANSMISSION CONTROL PROTOCOL, DARPA INTERNET PROGRAM PROTOCOL SPECIFICATION,” Internet Engineering Task Force (IETF), Request for Comments (RFC) 793 (September 1981) [“IETF RFC 793”].
- 1.3    Prior “tcpsecure” internet-drafts and the current draft, namely draft-ietf-tcpm-tcpsecure-01.txt, draft-ietf-tcpm-tcpsecure-02.txt, draft-ietf-tcpm-tcpsecure-03.txt, and draft-ietf-tcpm-tcpsecure-04.txt.
- 1.4    Electronic mail messages. Submitted herewith is a printout of numerous email messages relating to development of an embodiment. The printouts are redacted to block out dates, as permitted by established USPTO

practice, because the printouts do not qualify as prior art and disclosure of dates could seriously prejudice Applicants in any subsequent interference proceeding.

- 1.5 Statement of Tony Li in “NANOG,” <http://www.irbs.net/internet/nanog/0405/0254.html>. Applicants do not admit that this document is factually correct, or that this document qualifies as prior art.
- 1.6 TCPM tcpsecure discussion archive, <http://www1.ietf.org/mail-archive/web/tcpm/current/thrd17.html>. Applicants do not admit that these documents qualify as prior art.
- 1.7 Excerpts from “DDTS” defect tracking system of Cisco Systems, Inc. relating to defect “CSCed27956” (the “DDTS document”). This information formally recorded the relevant technical problem.

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2. “Art related to applicant’s invention, applicant’s disclosure, or the claimed subject matter or exemplified by the IETF draft.”
  - 2.1. IETF RFC 793.
  - 2.2. Watson.
  - 2.3. Applicants are unsure whether the information in this sub-section qualifies as a “publication” for purposes of the Office Action, but are identifying the information in an abundance of caution: The OpenBSD Unix operating system kernel; the NetBSD Unix operating system kernel; the FreeBSD Unix operating system kernel; the LINUX operating system kernel. It is not practical to provide a copy of the code in printed form given the extremely large size of a printed copy and the complexity of the various inter-linked files involved. However, the code

is available in online open-source projects. Further, the emails submitted herewith include pertinent code excerpts.

3. “[C]opies of each publication which any of the applicants authored or co-authored and which describe the disclosed subject matter claimed in the application and/or exemplified by the IETF draft.”

3.1. draft-ietf-tcpm-tcpsecure-01.txt

3.2. draft-ietf-tcpm-tcpsecure-02.txt

3.3. draft-ietf-tcpm-tcpsecure-03.txt

3.4. draft-ietf-tcpm-tcpsecure-04.txt

4. “[T]he title, citation and copy of each publication that any of the applicants relied upon to develop the disclosed subject matter that describes the applicant’s invention, particularly as to developing the subject matter claimed in the application. For each publication, please provide a concise explanation of the reliance placed on that publication in the development of the disclosed subject matter or exemplified by the IETF draft.”

4.1. Applicants do not understand the phrase “or exemplified by the IETF draft.” Clarification is requested.

4.2. IETF RFC 793. RFC 793 defines the Transmission Control Protocol (TCP). Applicants relied on the TCP RFC for context and background, because one goal of an embodiment of the application is to provide a workable solution that can be integrated into a software implementation of TCP. Applicants sought to make the solutions disclosed in the application compatible with TCP as defined in RFC 793.

- 4.3. The code identified in section 2.3 above. Applicants examined the source code of the indicated operating system kernels to determine whether the code addressed the security vulnerabilities identified in the application, and determined that the security vulnerabilities were not addressed.
- 4.4. Watson. The applicants read Watson to understand the problems that are solved in the application.

5. “In light of the contributors listed in the IETF draft, any documentation of information related to the disclosed subject matter in the application.”

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- 5.1. Applicants do not understand the phrase “In light of the contributors listed in the IETF draft” but assume that the Office Action is seeking information relating to inventorship.
- 5.2. To the extent that the request seeks documentation or information that is owned, possessed, or in the custody or control of individuals identified in the “Contributors” section of the IETF draft and who are not now employees of the assignee of the application (Cisco Technology, Inc., a wholly owned subsidiary of Cisco Systems, Inc., San Jose, California), such information is unknown to or is not readily available to the applicants (see 37 C.F.R. 1.105(a)(4)).
- 5.3. To the extent that the request seeks documentation or information only from the applicants, the applicants believe that the preceding responses include all such information and are fully responsive to the request.

## II. SUPPLEMENTAL REMARKS

The Office Action states that the request for information is made in view of the IETF draft “draft-ietf-tcpm-tcpsecure-00.txt.” The Office Action correctly notes that the IETF draft

was published after the filing date of the application, and in fact the IETF draft does not qualify as prior art under any provision of the US patent laws.

The Office Action further states, “in Section 5 under Contributors it lists contributors to the draft standard that are not listed as inventors in the application.” However, a contributor to an IETF draft is not necessarily a person who legally qualifies as an inventor; an author or contributor is not always an inventor. Further, sections 3 and 4 of the IETF draft describe subject matter other than what is claimed in the application. Applicants have determined based upon their best present knowledge and belief that the inventorship of the application is correct.

The Office Action further states that the contributors “worked through the 2003 holidays.” However, the IETF draft does not state which persons in particular performed relevant work, and does not specify who conceived of the solutions represented in the IETF draft in a legal sense, as opposed to those who participated only in determining or discussing the relevant technical problem or context. Applicants have determined based upon their best present knowledge and belief that the inventorship of the application is correct, and that no disclosure of the subject matter claimed in the application and qualifying under any sub-section of 35 U.S.C. §102 occurred prior to the filing date of the application.

The current version of the IETF draft, “draft-ietf-tcpm-tcpsecure-04.txt,” is believed to contain a more accurate description of the contributors to the draft.

### III. CONCLUSIONS & MISCELLANEOUS

Applicants believe that the requirement for information has been fully addressed. The Examiner is respectfully requested to contact the undersigned by telephone relating to any issue that would advance examination of the present application. A petition for extension of time, to the extent necessary to make this reply timely filed, is hereby made. If any applicable fee is missing or insufficient, throughout the pendency of this application, the Commissioner is hereby

authorized to any applicable fees and to credit any overpayments to our Deposit Account No. 50-1302.

Respectfully submitted,

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